CF0000062818

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Cr.Appeal No. 1253/1999.

Appellant : Ishwar son of Bukuram Sahu,
(In Jail) aged 32 years, by occupation
Agriculturist, resident of
village Murki, P.S. Mahasamund,
District Mahasamund, M.P. ... (A-7)

Versus.

Respondent : State of Madhya Pradesh.

Criminal Appeal under section 374(2) of the Cr.P.C.

(35)

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB:- Hon'ble Shri L.C. Bhadoo, Ag. C.J. &

Hon'ble Shri Sunil Kumar Sinha, J.

2-2-2007:-

Smt. Indira Tripathi, counsel for appellant in Cr.A. No.1253/99.

Shri J.A. Lohani, counsel for appellant No.1 in Cr. A. No.1398/99.

Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, Advocate for appellant No.2 in Cr.A. No.1398/99.

Shri R.K. Jain, counsel for appellant in Cr.A. No.1698/99.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag. C.J.

Criminal Appeal No.1698/99 filed by Baldau, Criminal Appeal No.1253/99 filed by Ishwar, and Criminal Appeal No.1398/99 filed by Ramnath & Udhoram are arising out of same incident and same judgment dated 26-4-99 in S.T. No.140/97 & Special Sessions Trial No.29/97, therefore, they are being disposed of by this common judgment.

The accused/appellants have preferred these appeals under Section 374 (2) of the Cr.P.C. questioning legality and correctness of the judgment of conviction and order of sentence dated 26/4/99 passed by the Special Judge, Raipur whereby learned Special Judge convicted and sentenced accused/ appellants as under:-

Name of the accused	Conviction & Sentence
Ishwar	U/s 302 IPC, sentenced to undergo imprisonment for life.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Ramnath Gada & Baldau	U/s 302 & 323 IPC, each sentenced to undergo imprisonment for life & R.I. for 1 year, respectively.
	Udho	U/s 302 & 323 IPC, & 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, sentenced to undergo imprisonment for life, to undergo R.I. for 1 year & to undergo R.I. for 6 months, to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 10 days, respectively. It was also ordered that all the sentences shall run concurrently.

The case of the prosecution, in brief, is that on 11/11/96 at 4 p.m. in village Murki, P.S. Mahasamund the accused persons armed with weapon, formed unlawful assembly with a object to use criminal force and cause violence and to commit mischief, in pursuance of common object they attacked persons of Satnami community, thereby inflicted simple injuries to 7-8 persons, in pursuance of common object assaulted Ramnath with Lathi with intention to cause his death, and committed his murder, thereby they committed offence under Sections 147, 148, 149, 341, 294, 323, 336, 427 and 302 of the I.P.C.

The matter was reported by PW-1 Smt. Mati Bai on the same day at about 20.45 hours in the night in the Police Station Mahasamund. On the report of PW-1 Smt. Mati Bai offence under Sections 294 & 323 IPC was registered under Ex.-P/5. The Investigating Officer left for scene of occurrence. During the police custody, Baldau gave memorandum Ex-P/2

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आदेश पत्रक (पूर्वानुबद्ध)

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regarding weapon of offence i.e. Lathi, in pursuance of that Lathi was taken into possession under Ex.-P/3. The full pant of accused Baldau stained with blood was seized under Ex.-P/4.

Injured Mati, Rameshar, Ghasiram, Bhagwat, Ramnath S/o Adhru, Mehattar, Hemkumari, Sundariya, Kanwar Ram were sent to the Government Hospital, Mahasamund for examination of their injuries. After examination, injury reports i.e. Ex.-P/6-A in respect of Mati, Ex.-P/7-A in respect of Rameshar, Ex.-P/8-A in respect of Ghasiram, Ex.-P/9-A in respect of Bhagwat, Ex.-P/12-A in respect of Ramnath S/o Adhru, Ex.-P/13 in respect of Mehattar, Ex.-P/14 in respect of Hemkumari, Ex.-P/15 in respect of Sundariya, and Ex.-P/16 in respect of Kanwar Ram were prepared by Dr. Akhilesh Kumar Tripathi (PW-15).

Ramnath S/o Adhru sustained injuries in the incident dated 11/11/96, he was taken to the hospital, Mahasamund from where he was shifted to Medical College Hospital, Raipur on 13/11/96. During treatment, he succumbed to the injuries on 17/11/96.

Receiving merg intimation {Ex.-P/24 & Ex.-P/24-A}, after giving notice Ex.-P/10 to the Panchas, Investigating Officer prepared inquest (Ex.-P/11) on the body of Ramnath Satnami. The body of Ramnath Satnami was sent for postmortem examination to Maikahara Hospital, the postmortem was conducted on the body of Ramnath Satnami by Dr. Arvind Neralwar (PW-16), postmortem report Ex.-P/23 was prepared. The doctor opined that Ramnath Satnami died on account of coma due to head injury. Site plan Ex.-P/29 of the place of occurrence was prepared.

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आदेश पत्रक (पूर्वानुबद्ध)

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After completion of investigation, charge sheet was filed against 16 accused persons including 4 accused/appellants in the Court of Judicial Magistrate, 1st Class, Mahasamund, who in turn committed the case to the Sessions Judge, Raipur from where learned Special Judge received the case on transfer for trial.

Learned Special Judge in S.T. No. 140/97 framed the charges against accused persons namely Baldau, Ramnath Ganda, Samlu, Kanwar Ram Gond, Sonsai and Ramesh for commission of offence under Sections 147, 148, 323 and 302 of the I.P.C. whereas, in Special Sessions Trial No.29/97 framed the charges against accused persons namely, Ishwar, Munna @ Punit Sahu, Parmanand, Tijuram, Bhakka @ Rambharos, Udhoram, Hirau, Santram, Mehtaru and Bharat for commission of offence under Sections 147, 148, 323, 302 IPC and Section 3 (1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, the accused persons abjured the charges.

Prosecution in order to establish the charges against the accused persons examined 21 witnesses. Statements of accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime.

Learned Special Judge after hearing arguments of counsel for respective parties convicted accused persons namely Ishwar, Baldau, Ramnath Ganda and Udho as aforementioned whereas, acquitted other 12 accused persons.

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We have heard learned counsel for the parties.

Learned counsel for the accused/appellants have not disputed homicidal death of Ramnath Satnami. Moreover, from the evidence of eyewitnesses namely, PW-1 Smt. Mati Bai, PW-2 Ghasiram, PW-3 Mehattar, PW-5 Smt. Hemkumari Bai, PW-6 Rameshwar, PW-7 Bhagwat, PW-8 Smt. Sundari Bai & medical evidence of Dr. Arvind Neralwar (PW-16) who has stated that he conducted postmortem on the body of Ramnath Satnami on 18-11-96, there were 11 injuries on various parts of the body, out of that there were 6 lacerated wounds, 4 abrasions, radius bone of left hand was fractured, there was fracture of parieto temporal bone, clotted blood was present in the brain, cause of death of Ramnath Satnami was cumulative effect of above injuries as a result of coma and death was homicidal in nature, his report is Ex.-P/23, therefore, in view of the above ocular and medical evidence, it is established that death of deceased Ramnath Satnami was homicidal in nature.

Accused – Ishwar

As far as involvement of accused Ishwar is concerned, Smt. Indira Tripahti, learned counsel for the accused/appellant argued that in respect of appellant Ishwar, only two witnesses namely, PW-10 Smt. Devbati Bai (wife of deceased Ramnath) and PW-11 Hriday Ram (brother of ~~accused~~ deceased) Ramnath) have been examined by the prosecution in order to establish the charges against him. But they have improved their version before the Court as they had not stated in their statements i.e. Ex.-D/7 & Ex.-D/8 recorded under Section 161 Cr.P.C. that accused Ishwar attacked Ramnath Satnami with Lathi. She also argued that the name of the

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accused does not find place in First Information Report (Ex.-P/5) lodged by PW-1 Smt. Mati Bai.

Shri Akhil Mishra, Panel Lawyer also submitted that regarding involvement of Ishwar there are only two witnesses i.e. PW-10 Smt. Devbati Bai and PW-11 Hriday Ram have been examined by prosecution.

Having heard learned counsel for the parties, we have perused the record. We are of the considered opinion that argument advanced by learned counsel for the accused/appellant has substance for the reason that PW-10 Smt. Devbati Bai, wife of the deceased, has stated that at about 4 p.m. her husband went to betel shop of Kishan Marar for chewing betel. She also followed him up to Jaitstambh where she stopped. When her husband was returning from the shop and reached in front of the shop of one Libra Sahu, accused Rama Gada was standing, he pulled his leg, thereafter, accused Baldau, Udho, Rama Gada and Ishwar attacked her husband with Lathi and committed his murder. Thereafter, people of vicinity started pelting brick bat and stones. In cross-examination, she has stated that she does not know as to why the above fact was not written by police in her statement Ex.-D/7. In para-4, she has admitted that road of vicinity is in 'U' shape which starts from their vicinity, thereafter that road takes 'U' turn. It is correct to say that shops were not visible from the place where she was standing i.e. Jaitstambh.

Perusal of her statement Ex.-D/7 recorded under Section 161 Cr.P.C. reveals that in front of the house of Pardesi Kewat, Baldau Sirdar stopped and abused her husband. In front of the house of Kotwar, Ishwar, Ramnath, Samlu, Kanwal, Udho, Sonsai, Parmanand, Tiju and Ramesh were standing carrying club in their hands. They raised cries that he be

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beaten, on which Baldau pulled his leg, as a result of which her husband fell down and he attacked her husband with Lathi on hand & head, thereafter persons standing there went near him and hit him with legs, as a result of which he became unconscious and fell down. Therefore, in this statement, she had not stated that accused Ishwar attacked her husband with Lathi.

Similarly, PW-11 Hriday Ram has stated when he was sleeping in his house, his son Chetan aged about 9 years, came and informed that people are beating uncle and most probably he died, on which he went towards the street, he saw that Baldau was attacking his brother with Lathi, thereafter he saw that Ramnath Kotwar was also attacking his brother, thereafter Udho & Ishwar came, they also attacked his brother. But, in his police statement (Ex.-D/8), he has stated that Baldau attacked his brother, as a result of which he fell down on the street and became unconscious. He has not stated in his police statement that Ishwar also attacked Ramnath. Therefore, both these witnesses have made improvement in their evidence before the Court regarding Ishwar, as has been mentioned that PW-10 Smt. Devbati Bai has stated in her evidence that she was standing near Jaitstambh from where place of occurrence was not visible. Moreover, the name of Ishwar does not find place in the FIR (Ex.-P/5) regarding his involvement in the crime in question. As per the evidence of PW-10 Smt. Devbati Bai and PW-11 Hriday Ram, they have made improvement in their Court evidence, as such, their evidence does not inspire confidence. Moreover, the evidence of PW-10 Smt. Devbati Bai and PW-11 Hriday Ram has not been corroborated by other eyewitnesses namely, PW-1 Smt. Mati Bai, PW-2 Ghasiram, PW-3 Mehattar, PW-5 Smt. Hemkumari Bai, PW-6 Rameshwar, PW-7 Bhagwat

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and PW-8 Smt. Sundari Bai that Ishwar assaulted the deceased. Hence, we are of the considered opinion that the prosecution has not been able to establish beyond reasonable doubt that accused Ishwar attacked deceased Ramnath with Lathi, as such, his conviction under Section 302 of the IPC cannot be sustained, as the same is not based on legal evidence.

Accused - Ramnath Gada & Udho

As far as involvement of these accused/appellants in crime in question is concerned, they have been convicted for commission of offence under Sections 302 & 323 of the IPC, in addition to this, accused Udho has also been convicted under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. They have been convicted on the basis of evidence of PW-1 Smt. Mati Bai, PW-2 Ghasiram, PW-4 Ramdas, PW-5 Smt. Hemkumari Bai, PW-6 Rameshwar, PW-7 Bhagwat, PW-8 Smt. Sundari Bai, PW-10 Smt. Devbati Bai and PW-11 Hriday Ram. In the Court evidence of above witnesses, they have stated about involvement of accused Ramnath Gada & Udho in assaulting deceased Ramnath Satnami whereas, in their police statements Ex.-P/1, Ex.-D/1, Ex.-D/3, Ex.-D/4, Ex.-D/5, Ex-D/6, Ex.-D/7 and Ex.-D/8, they have not stated anything regarding assault made by these accused/appellants to deceased Ramnath Satnami. Therefore, these witnesses have made improvement in their Court evidence regarding assault made by present accused/appellants to deceased Ramnath Satnami. Apart from that, PW-1 Smt. Mati Bai, who was present at the time of incident at about 4 p.m., who had lodged report in the Police Station at 8.45 p.m. had not mentioned anything about the assault made by these accused/appellants to deceased Ramnath Satnami. Therefore,

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there is no legal and clinching evidence regarding involvement of these accused/appellants in committing murder of Ramnath Satnami, as such conviction of accused Ramnath Gada under Section 302 & 323 of the I.P.C. cannot be sustained, as also conviction of accused Udho under Section 302 & 323 of the I.P.C. & under Section 3 (1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained.

Accused – Baldau

As far as involvement of this accused/appellant in crime in question is concerned, Shri R.K. Jain, learned counsel for the accused/appellant submitted that he is not disputing involvement of the accused/appellant, but looking to the nature of injuries, medical evidence as also prosecution evidence, the prosecution has not been able to establish that the accused assaulted Ramnath Satnami with intention to cause his death, as such offence against the present accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Shri Akhil Mishra, Panel Lawyer, supported the judgment of the trial Court.

As far as involvement of the present accused/appellant in crime in question is concerned, PW-1 Smt. Mati Bai, who lodged report Ex.-P/5 in the police station, has categorically mentioned in the report that Baldau attacked Ramnath Satnami with Lathi, as a result of which he sustained injuries. The above version of this witness stands corroborated by her Court evidence as also Court evidence of PW-2 Ghasiram, PW-3 Mehattar, PW-5 Smt. Hemkumari Bai, PW-6 Rameshwar, PW-7 Bhagwat,

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PW-8 Smt. Sundari Bai, PW-10 Smt. Devbati Bai and PW-11 Hriday Ram, therefore, involvement of the present accused/appellant in inflicting injury to Mati Bai, her husband Rameshwar as also in attacking deceased Ramnath Satnami. is established by cogent evidence

In order to appreciate argument advanced by learned counsel for the accused/appellant that the prosecution has not been able to establish offence under Section 302 of the I.P.C. against the present accused/appellant, Dr. Arvind Neralwar (PW-16) in para-4 of his cross-examination has stated that it is correct to say that he has not mentioned in the postmortem report Ex.P/23 that injuries were sufficient in the ordinary course of nature to cause death. Hence, the doctor has not given any ~~information~~ opinion that injuries were sufficient in the ordinary course of nature to cause death. Moreover, the deceased sustained injuries on11/11/96 whereas, he died on 17/11/96 while undergoing treatment in the Makahara Hospital, Raipur. Apart from that, if we look into facts of the case, the background in which offence was committed, perusal of the record shows that in village, there ~~was~~ were 2 groups, on the one hand, Satnami community and other community on the other hand, on account of that dispute between the two groups, as per the evidence of PW-7 Bhagwat, persons of both communities were asked to submit their bail bonds to maintain peace and tranquility under Section 107 read with Section 116 of the Cr.P.C.. It has come on record in the police statement of Mati Bai that when she was returning after purchasing biscuits from the shop, then Baldau and others were sitting, they were saying that when their person namely Samlu went in the Satnami area, why Satnami people attacked him, on that, they attacked her, when her husband came, attacked him also and thereafter when Ramnath Satnami (since

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deceased) came, Baldau first pulled his leg, thereafter, assaulted him on hand & head with Lathi. Therefore, in this background, when there was already some dispute between the two communities, prior to the incident complainant party beaten one Samlu when he went in the vicinity of complainant party, as a retort to that accused Baldau assaulted Mati Bai, her husband Rameshwar and deceased Ramnath Satnami. Hence, in this background, it cannot be said that the accused attacked the deceased with intention to cause his death because prior to the assault, this person attacked Mati Bai & her husband, they sustained simple injuries. Accused Baldau was not having any previous animosity particularly against Ramnath Satnami, who died on account of injuries sustained, as a result of assault made by Baldau. Moreover, as has been mentioned earlier, the deceased died after about 6 days of the incident, cumulative effect of these facts shows that the prosecution has not been able to establish that accused Baldau assaulted the deceased with intention to cause his death. However, it can be inferred from the evidence available on record that the manner in which the accused assaulted the deceased with Lathi on his head, as a result of which parietal bone was fractured, the accused was definitely having knowledge that by attacking with Lathi on head, he may likely to cause death of the deceased. Therefore, knowledge can be attributed to the accused, as such, offence against the present accused/ appellant does not travel beyond Section 304 Part-II of the IPC, as such, finding of the trial Court convicting the accused under Section 302 of the IPC cannot be sustained.

In the result,

(1) Criminal Appeal No.1253/99 filed by accused Ishwar is allowed. Conviction and sentence imposed upon him under Section 302

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of the IPC are set aside and he is acquitted of the said charge. It is stated that accused Ishwar is already on bail, therefore, his bail bonds are discharged, he need not surrender in the custody.

(2) Criminal Appeal No.1398/99 filed by accused Ramnath & Udhoram is allowed. Conviction and sentence imposed upon accused Ramnath under Sections 302 & 323 of the IPC are set aside. He is acquitted of the said charges. Conviction and sentence imposed upon accused Udhoram under Sections 302 & 323 of the IPC as also under Section 3 (1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are set aside, he is acquitted of the said charges. Accused Ramnath is already on bail, therefore, his bail bonds are discharged, he need not surrender in the custody. Accused Udhoram be released forthwith unless required to be detained in any other case.

(3) Criminal Appeal No.1698/99 filed by accused Baldau is partly allowed. Conviction and sentence imposed upon him under Section 302 of the IPC are set aside. Instead thereof, he is convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 10 years. His conviction and sentence under Section 323 of the IPC are maintained. It is stated that accused Baldau is in detention since 26/11/96 thereby he has completed sentence, as such, he be set at liberty forthwith unless required to be detained in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Barve

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